

REMARKS

Claims 53-88 were pending before this Action. Claims 53-67, 73-84, and 87-88 were rejected under 35 USC 112, first paragraph, claims 53-55, 59-64, 68-71, 73-75, 77-78, 80, and 85-86 were rejected under 35 USC 102 for anticipation over U.S. Patent No. 5,475,317 to Smith and claims 53-55, 59-64, 68-71, 73-75, 77-78, 80, and 85-86 were rejected under 35 USC 102 for anticipation over U.S. Patent No. 5,378,311 to Nagayama et al.

Accordingly, no rejection has been presented against claim 72 and claim 72 has not been rejected. Applicant hereby amends claim 68 to include limitations of claim 72. Claim 68 is in condition for allowance inasmuch as no rejections were lodged against claim 72 and claim 68 includes the limitations of claim 72.

This amendment is a proper amendment under MPEP §714.12 inasmuch as Applicant is placing the application in condition for allowance by cancelling all rejected claims and Applicant is not required to present a showing of good and sufficient reasons why the amendments were not earlier presented, although such reasons exist because Applicant only became aware of the non-rejected status of claim 72 in the last Office Action. Applicant respectfully requests entry of this amendment in accordance with 37 CFR 1.116(b) and allowance of the present application.

In the event that the present application is not allowed, Applicant respectfully requests restarting of the period of response as required by MPEP 710.06. In particular, no rejection is currently presented against claim 72. Accordingly, claim 68 (including limitations of claim 72) is believed to be allowable since the Office Action fails to set forth any reasons for any adverse action or any objection or requirement with respect to claim

72 as mandated by 37 CFR 1.104 and MPEP 707.

If claim 68 is not found to be allowable, Applicant respectfully requests a supplementary action explaining any rejections and such explanation establishes a new date for which the statutory period runs as defined in MPEP 710.06.

In particular, if claim 68 is not allowed, Applicant respectfully asserts that the Office Action clearly fails the regulatory mandate of 37 CFR 1.104(a) that the "examination be complete with respect both to compliance of the application . . . with the applicable statutes and rules and *to the patentability of the invention as claimed.*" (Emphasis added). Further, 37 CFR 1.104(b) provides that "the examiner's action will be complete as to all matters."

MPEP §706.07 (8th ed.) states that "the examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal." (Emphasis added). Clearly, it is possible for the Examiner to develop a clear issue if claim 68 is not allowed. Presently, the record for appeal is poor due to the deficiencies of the current Office Action if claim 68 is not allowed..

MPEP §706.07 further states that "...present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." According to MPEP §706.07, final rejections "must also be clearly developed to such an extent that applicant may readily judge the advisability of an appeal." (Emphasis added).

To resolve the deficiencies of the Examiner's Action, MPEP §706.07(e) provides that "the examiner may withdraw the rejection of finally rejected claims." (Emphasis added).

Applicant respectfully requests allowance of the present application.

Applicant appreciates the return of the forms PTO-1449. However, Applicant notes that reference AE on the form PTO-1449 dated March 22, 2002 and references AL, AM, AN, AR, AS, AT on page 1 and references AP, AR, AS, AT, AU on page 2 on the form PTO-1449 dated October 18, 2002 have not been initialed. Applicant respectfully requests initialization of the references on the forms PTO-1449 (copies enclosed for the Examiner's convenience) and return of the initialed forms to Applicant indicating full consideration of the references by the Examiner in compliance with obligations set forth in MPEP §609 (8th ed.). Applicant respectfully requests a telephone call or other indication from the Examiner as to why the references have not been initialed prior to any issuance of a Notice of Allowance so Applicant can properly respond to have such references considered during the prosecution of this application.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: 2/20/03

By: 
James D. Shaurette
Reg. No. 39,833